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INDIGENOUS ISSUES

Written statement*/ submitted by the International Indian Treaty Council,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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The International Indian Treaty Council, our affiliates Defensoria Maya and Comite Campesina del Altiplano of Guatemala, Movimiento de la Juventud Kuna of Panama, and Federacion Indigena y Campesina de Imbabura of Ecuador along with Indigenous Peoples representatives from around the world, participated in the 6th UN Intersessional Working Group on the Draft Declaration for the Rights of Indigenous Peoples November 20 – December 1, 2000, established by Commission resolution 1995/32.

The IITC has been involved in this process since its inception in the UN Working Group on Indigenous Populations. During the Declaration's twelve-year drafting process in the WGIP, every effort was made to accommodate views of UN experts, Indigenous Peoples and states. States had ongoing opportunities to propose wording, much of which is now included in the current text. Indigenous Peoples participating in the process felt that more than sufficient compromise was made on their part in order to reach agreement on the current text as it now stands.

The resulting Declaration has been endorsed not only by two UN bodies, but by hundreds of Indigenous Peoples, Nations, organizations and communities around the world, who have accepted the current text as the "minimum standard" necessary for insuring full international recognition of the essential rights of Indigenous Peoples. Indigenous Peoples have stated that they are not willing to compromise any further to consider changes that would diminish, limit or qualify the essential, broad rights the Declaration currently recognizes.

This position is taken not out of stubbornness, intransigence or a failure to understand the UN process. It is based on principle and in many cases, the clear mandate of our affiliates and members.

For Indigenous Peoples, the ongoing debate of over the Draft Declaration is not a legalistic " word game", nor is it tactical maneuvering to hold out for the "best we can get". It is a critical and principled process of upholding and recognizing the sacred and inalienable rights necessary to survival of our children and our future generations. IITC, along with hundreds of other organizations and Peoples, is committed to defending the current text as an integrated whole, despite pressure by some states for us to accept language that would limit the essential rights it now recognizes for the sake of making "progress" towards its adoption.

While it seems that some states want to maintain the status quo by throwing up obstacles to the process, many others appear to recognize this as an historic opportunity to build new relationships with Indigenous Peoples, based on mutual respect and recognition. The discussions about the principles and rights encompassed by the Declaration are historic in and of themselves within the UN system. We recognize the contributions of Chairman-Rapporteur Mr. Luis Chavez in maintaining his commitment to transparency, open exchange of views, and equality of participation by both state and Indigenous Peoples' delegations during these sessions. This equality of participation is essential for the legitimacy of the Declaration that will eventually be approved by this process.

In this spirit, the IITC expresses disagreement with the pattern established over the previous two years in which states have entered into closed sessions, without the participation of Indigenous Peoples, to draft new or alternative composite texts of articles under discussion, and have included them as annexes in the Chairman-Rapporteurs' report. We believe that this methodology is contradictory to the principle and practice of full and equal participation, consensus –building, and the intention of Commission resolution 19995/32, which states that the Declaration text as approved by the UN Subcommission for the Prevention of Discrimination and Protection of Minorities in 1994 as the basis for discussion and work in the Intersessional Working Group.

A notable indication of progress made during the last session was that a key element on which states have not been able to agree in the past, the unqualified use of the term "Indigenous Peoples" throughout the Declaration, received a much greater level of support by states. Only a handful of states still expressed their opposition to its unqualified use in the Declaration.

However, some states continue to propose changes that would seriously weaken or undermine the integrity of the current text and diminish the rights it affirms. One example at the last session was the suggestion by a small ground of states that the term "applicable" be inserted to Article 1 of the Declaration, one of the articles under discussion.

The collective position of the Indigenous caucus representing the Indigenous participants from all regions of the world, is that the addition of this term in Article 1 would effectively limit the international protections for Indigenous Peoples to only those international laws or conventions which have actually been ratified by the individual states in which they live. Indigenous Peoples oppose such attempts to limit or "domesticate" the full enjoyment of internationally recognized rights. We support the current text, which insures full protection under the entire range of human rights law, including customary international law, despite the status of their ratification by individual states.

The IITC looks forward to advancing this historic process in the true spirit of partnership between Indigenous Peoples and states. We request the support of the Commission on Human Rights in continuing this vital process by extending the mandate of the Intersessional Working Group on the Draft Declaration or the Rights of Indigenous Peoples at this session.

The IITC also welcomes the newly created Permanent Forum for Indigenous issues, in spite of some misgivings on the part of Indigenous Peoples that it will truly be able to accomplish its mandate. Although the matter of its organization and budget are now in the hands of the Economic and Social Council (ECOSOC), this Commission, as the originator of the resolution giving rise to its creation is still very influential in these matters.

The ECOSOC resolution on the Establishment of the Permanent Forum states, that, "the Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health, and human rights."

In light of this broad mandate, our concerns extend to two matters now pending before ECOSOC: the organization of the Secretariat and its location.

We are greatly concerned about the perceived assumption on the part of the United Nations system, particularly ECOSOC and this Commission, that the secretariat of the Permanent Forum will be subsumed or attached to the Office of the High Commissioner (OHCHR). We continue to recognize the important contributions and reliable support of the OHCHR and this Commission with regard to Indigenous human rights. As Indigenous Peoples and their NGOs, we will continue our participation and input in both. We would hope and expect that neither the OHCHR nor this Commission would cease their vital interest or activities in the protection and promotion of the Human Rights of Indigenous Peoples.

But the mandate and methods of work of the Permanent Forum, including the provision of expert advice and recommendations to the Council, as well as programmes, funds and agencies of the United Nations system, are very broad and include areas of interest not within the expertise or mandate of the OHCHR, nor of this Commission. The Permanent Forum, as envisioned by Indigenous Peoples and this Commission, is to work with the entire United Nations system included in the mandate of ECOSOC. It is our view that a secretariat located within the OHCHR will be limited in its scope to fully implement the Permanent Forum's mandate and methods of work.

We, along with many other Indigenous organizations and NGO's, are very concerned about the eventual location of the Secretariat, given the mandate to relate to United Nations programmes and agencies many of which conduct their activity in New York. To be effective, we believe that the Secretariat of the Permanent Forum must be able to establish ongoing relations with these agencies and participate with them regularly to address in issues of concern to Indigenous Peoples. ECOSOC itself must become acquainted with Indigenous Peoples and their issues.

For these and other reasons, including the importance of having a secretariat that is headed by Indigenous persons, we would urge this Commission to communicate these concerns to ECOSOC.